

PATENT COOPERATION TREATY

From the
INTERNATIONAL SEARCHING AUTHORITY

PCT

To:

see form PCT/ISA/220

WRITTEN OPINION OF THE INTERNATIONAL SEARCHING AUTHORITY (PCT Rule 43bis.1)

Date of mailing
(day/month/year) see form PCT/ISA/210 (second sheet)

Applicant's or agent's file reference
see form PCT/ISA/220

FOR FURTHER ACTION
See paragraph 2 below

International application No.
PCT/BE2004/000123

International filing date (day/month/year)
27.08.2004

Priority date (day/month/year)
29.08.2003

International Patent Classification (IPC) or both national classification and IPC
A23L1/19, A23D7/00

Applicant
PURATOS N.V.

1. This opinion contains indications relating to the following items:

- ☒ Box No. I Basis of the opinion
- ☒ Box No. II Priority
- ☒ Box No. III Non-establishment of opinion with regard to novelty, inventive step and industrial applicability
- ☐ Box No. IV Lack of unity of invention
- ☒ Box No. V Reasoned statement under Rule 43bis.1(a)(i) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement
- ☒ Box No. VI Certain documents cited
- ☐ Box No. VII Certain defects in the international application
- ☐ Box No. VIII Certain observations on the international application

2. FURTHER ACTION

If a demand for international preliminary examination is made, this opinion will usually be considered to be a written opinion of the International Preliminary Examining Authority ("IPEA"). However, this does not apply where the applicant chooses an Authority other than this one to be the IPEA and the chosen IPEA has notified the International Bureau under Rule 66.1bis(b) that written opinions of this International Searching Authority will not be so considered.

If this opinion is, as provided above, considered to be a written opinion of the IPEA, the applicant is invited to submit to the IPEA a written reply together, where appropriate, with amendments, before the expiration of three months from the date of mailing of Form PCT/ISA/220 or before the expiration of 22 months from the priority date, whichever expires later.

For further options, see Form PCT/ISA/220.

3. For further details, see notes to Form PCT/ISA/220.

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WRITTEN OPINION OF THE
INTERNATIONAL SEARCHING AUTHORITY

10/568044

International application No.
PCT/BE2004/000123

IAP20 Rec'd FCT/PTO 13 FEB 2006

Box No. I Basis of the opinion

1. With regard to the **language**, this opinion has been established on the basis of the international application in the language in which it was filed, unless otherwise indicated under this item.
☐ This opinion has been established on the basis of a translation from the original language into the following language , which is the language of a translation furnished for the purposes of international search (under Rules 12.3 and 23.1(b)).
2. With regard to any **nucleotide and/or amino acid sequence** disclosed in the international application and necessary to the claimed invention, this opinion has been established on the basis of:
 - a. type of material:
☐ a sequence listing
☐ table(s) related to the sequence listing
 - b. format of material:
☐ in written format
☐ in computer readable form
 - c. time of filing/furnishing:
☐ contained in the international application as filed.
☐ filed together with the international application in computer readable form.
☐ furnished subsequently to this Authority for the purposes of search.
3. ☐ In addition, in the case that more than one version or copy of a sequence listing and/or table relating thereto has been filed or furnished, the required statements that the information in the subsequent or additional copies is identical to that in the application as filed or does not go beyond the application as filed, as appropriate, were furnished.
4. Additional comments:

**WRITTEN OPINION OF THE
INTERNATIONAL SEARCHING AUTHORITY**

International application No.
PCT/BE2004/000123

Box No. II Priority

1. ☒ The following document has not been furnished:

- ☒ copy of the earlier application whose priority has been claimed (Rule 43*bis*.1 and 66.7(a)).
- ☐ translation of the earlier application whose priority has been claimed (Rule 43*bis*.1 and 66.7(b)).

Consequently it has not been possible to consider the validity of the priority claim. This opinion has nevertheless been established on the assumption that the relevant date is the claimed priority date.

2. ☐ This opinion has been established as if no priority had been claimed due to the fact that the priority claim has been found invalid (Rules 43*bis*.1 and 64.1). Thus for the purposes of this opinion, the international filing date indicated above is considered to be the relevant date.

3. Additional observations, if necessary:

**WRITTEN OPINION OF THE
INTERNATIONAL SEARCHING AUTHORITY**

International application No.
PCT/BE2004/000123

Box No. III Non-establishment of opinion with regard to novelty, inventive step and industrial applicability

The questions whether the claimed invention appears to be novel, to involve an inventive step (to be non obvious), or to be industrially applicable have not been examined in respect of:

- ☐ the entire international application,
- ☒ claims Nos. 1-5,7,12

because:

- ☐ the said international application, or the said claims Nos. relate to the following subject matter which does not require an international preliminary examination (*specify*):
- ☒ the description, claims or drawings (*indicate particular elements below*) or said claims Nos. 1-5,7,12 are so unclear that no meaningful opinion could be formed (*specify*):

see separate sheet

- ☐ the claims, or said claims Nos. are so inadequately supported by the description that no meaningful opinion could be formed.
- ☒ no international search report has been established for the whole application or for said claims Nos. 1-5,7,12
- ☐ the nucleotide and/or amino acid sequence listing does not comply with the standard provided for in Annex C of the Administrative Instructions in that:
 - the written form ☐ has not been furnished
 - ☐ does not comply with the standard
 - the computer readable form ☐ has not been furnished
 - ☐ does not comply with the standard
- ☐ the tables related to the nucleotide and/or amino acid sequence listing, if in computer readable form only, do not comply with the technical requirements provided for in Annex C-bis of the Administrative Instructions.
- ☐ See separate sheet for further details

**WRITTEN OPINION OF THE
INTERNATIONAL SEARCHING AUTHORITY**

International application No.
PCT/BE2004/000123

Box No. V Reasoned statement under Rule 43bis.1(a)(i) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement

1. Statement

| | | |
|-------------------------------|-------------|---------------|
| Novelty (N) | Yes: Claims | 6 |
| | No: Claims | 8-11,13-15 |
| Inventive step (IS) | Yes: Claims | |
| | No: Claims | 6,8-11,13-15 |
| Industrial applicability (IA) | Yes: Claims | 6, 8-11,13-15 |
| | No: Claims | |

2. Citations and explanations

see separate sheet

Box No. VI Certain documents cited

1. Certain published documents (Rules 43bis.1 and 70.10)

and / or

2. Non-written disclosures (Rules 43bis.1 and 70.9)

see form 210

**WRITTEN OPINION OF THE
INTERNATIONAL SEARCHING
AUTHORITY (SEPARATE SHEET)**

International application No.

PCT/BE2004/000123

Re Item III.**IAP20 Res'd PCT/PTO 13 FEB 2006**

The subject-matter of claims 1-5, 7 and 12 is defined in terms of desired characteristics of the claimed composition, without mention of the technical features needed to achieve those results. The lack of clarity in the sense of Art. 6 PCT is such that no search could be carried out on the subject-matter of these claims, and that these can not be examined.

For the purpose of the establishment of the international search report as well as of this written opinion, it had to be considered that the composition of the invention comprises at least the essential ingredients as defined on p.7 line 10-14, namely 20-30% fat, 10-25% sweetener, as well as a stabilizer and an emulsifier.

Re Item V.

1 The following documents are referred to in this communication:

- D1: US 2002/119238 A1 (PIRES MURILO HADAD) 29 August 2002 (2002-08-29)
- D2: US-A-6 117 473 (COBOS MARIA DEL PILAR ET AL) 12 September 2000 (2000-09-12)
- D3: US-A-5 962 058 (KONISHI YOSHIHIRO ET AL) 5 October 1999 (1999-10-05)
- D4: US-A-5 336 514 (JONES MALCOLM G ET AL) 9 August 1994 (1994-08-09)
- D5: US 2003/104110 A1 (SIKKING ROB ET AL) 5 June 2003 (2003-06-05)
- D6: US-A-4 808 334 (EZAKI MITSUO ET AL) 28 February 1989 (1989-02-28)
- D7: WO 2004/052114 A (UNILEVER PLC ; LEVER HINDUSTAN LTD (IN); UNILEVER V (NL); STAM THEODO) 24 June 2004 (2004-06-24)
- D8: EP-A-1 430 790 (FUJI OIL CO LTD) 23 June 2004 (2004-06-23)

NB: Although not being comprised in the relevant prior art for the purposes of Art. 33 (2) and (3) PCT (R. 64.1 and 64.3 PCT), documents D7 and D8 are cited (R. 70.10 PCT) as they might become relevant in later regional phases in case of non-valid priority. However, these documents do not disclose the claimed subject-matter of the current demand.

2. Novelty and inventive step

2.1 The subject-matter of claims 8-11 and 13-15 is not new (Art. 33 (2) PCT) in light of D1, which also discloses milk-free, protein-free, stable, mechanically stable in whipped form, whippable oil-in-water emulsions comprising fat, sugar, an emulsifier, which are stabilized by polysaccharides and may be UHT sterilized. As for claim 6, it differs from the compositions of D1 by the precision that the content of trans fatty acids should be less than 2%. This is an obvious modification for the skilled person and therefore can not provide support for an inventive step in the sense of Art. 33 (3) PCT.

Same can also be said about D2 or D3, which anticipate the subject-matter of claims 8-11 and 13-15, but are not compatible with claim 6 as the compositions of D2 are primarily stabilized by gelatin (col.2 li.49-50 and 57-58), and those of D3 include proteins, e.g., under the form of milk powder (see col.5 li.50-59).

2.2 The most relevant passages of the above cited documents are those mentioned in the International search Report, to which the reader is referred.

2.3 The subject-matter of claims 6, 8-11 and 13-15 is industrially applicable in the sense of Art. 33 (4) PCT.